

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SECOND DIVISION
April 16, 2013

No. 1-12-0697
2012 IL App (1st) 120697-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

REV. FR. VASILE SUSAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 05 CH 07360
)	
ROMANIAN ORTHODOX EPISCOPATE OF)	Honorable
AMERICA, RT. REV. NATHANIEL (WILLIAM))	Moshe Jacobius,
POPP, and V. REV. FR. SIMON PAVEL,)	Judge Presiding.
)	
Defendant-Appellant.)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Simon concurred in the judgment.

ORDER

Held: Where plaintiff clergy member brought suit over his transfer out of a diocese, ecclesiastical abstention doctrine required dismissal of plaintiff's claims.

¶1 This case revolves around a dispute about the allocation of authority to transfer a member of the clergy in a religious organization. The circuit court found that the ecclesiastical abstention doctrine precludes the civil courts from adjudicating this matter and dismissed the case. We agree and affirm.

¶2 For ten years, plaintiff Vasile Susan was the parish priest of Falling Asleep of the Ever Virgin Mary (St. Mary's), a church in Chicago that belongs to the Romanian Orthodox Episcopate of America (ROEA), which is itself a self-governing (but not completely

independent) diocese of the Orthodox Church in America (OCA). In 2003, defendant Nathaniel Popp, the archbishop of the ROEA, removed plaintiff from his post at St. Mary's and transferred him out of the diocese. According to the complaint, defendant accused plaintiff of "disloyalty" due to unspecified actions or comments by plaintiff. Plaintiff demanded trial in a church court in order to combat this charge, but defendant asserted that the church court had no jurisdiction over this matter. Defendant claimed that he had the unilateral authority to remove plaintiff from his post and transfer him out of the diocese for reassignment elsewhere in the OCA. Despite plaintiff's petitions, no court was ever convened.

¶3 Plaintiff filed this lawsuit, contending that under the constitution and bylaws of the ROEA only a church court had the authority to effect such a disciplinary transfer. In his eight-count complaint, plaintiff primarily sought an injunction ordering defendant and the ROEA to grant plaintiff a trial in the church court. Plaintiff also raised additional tort and contract claims based on both the transfer itself and the circumstances surrounding it. The defendants moved to dismiss based on the ecclesiastical abstention doctrine several times, but the circuit court denied each motion and the case proceeded into discovery. In 2010, however, the original judge overseeing this case retired and the case was transferred to a new judge. During discovery, plaintiff sent a subpoena to a third party. The third party appeared before the new judge and moved to quash the subpoena. As part of its motion, the third party raised the ecclesiastical abstention doctrine. After full briefing and a hearing on the matter, the circuit court issued a comprehensive and exceptionally well-written memorandum order in which it carefully considered all of the relevant case law on the subject and found that the ecclesiastical abstention doctrine barred plaintiff's claims against defendants. The circuit court accordingly dismissed the case and plaintiff appealed.

¶4 The central issue in this appeal is whether the ecclesiastical abstention doctrine bars plaintiff's claims in this case, which is an issue that we review *de novo*. See *Ervin v. Lilydale Progressive Missionary Baptist Church*, 351 Ill. App. 3d 41, 43 (2004). The doctrine is based on both the free exercise and establishment clauses of the first amendment, as incorporated to the states in the fourteenth amendment, as well as similar provisions in the Illinois Constitution of 1970. See *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 406-07 (2008). Under the doctrine, civil courts are prohibited from deciding issues that involve matters of religious doctrine. See *Ervin*, 351 Ill. App. 3d at 43. Courts still, however, "may apply neutral legal principles to interpret provisions of religious documents involving *** nondoctrinal matters, to the extent that the analysis can be done in purely secular terms." (Internal quotation marks omitted.) *Id.*

¶5 The question here, then, is whether resolving any of plaintiff's claims requires us to consider matters of religious doctrine. Plaintiff thinks that it does not, contending that all we need to do in this case is to interpret the constitution and bylaws of the ROEA, which sets out the diocese's legal and administrative structure. Plaintiff relies for support primarily on *Ervin*, a case in which we found the abstention doctrine not to apply. In *Ervin*, the board of a congregational church unilaterally removed the church's pastor from office. We found that the board's action was illegitimate because the church's bylaws unequivocally allocated removal power to the congregation as a whole rather than merely the board. See *id.* at 46-47. In so finding, we noted that the abstention doctrine "do[es] not prohibit court intervention when the church fails to follow the procedures it has, itself, enacted."

¶6 Defendants, on the other hand, argue that resolving this dispute does require us to rule on matters of church dogma, particularly the allocation of authority within the polity regarding disciplinary procedures. In support, defendants rely on *Serbian Eastern Orthodox Diocese for*

the United States of America & Canada v. Milivojeovich, 426 U.S. 696 (1976), perhaps the most authoritative case on the ecclesiastical abstention doctrine. In *Milivojeovich*, the Supreme Court reversed the Illinois Supreme Court, finding that the abstention doctrine prohibited the courts from adjudicating a dispute involving, among other things, the defrockment of a bishop. The court held that "the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." *Id.* at 724-25. Defendants contend that second-guessing the ROEA's internal disciplinary procedures in this case runs directly contrary to the Supreme Court's holding in *Milivojeovich*.

¶7 *Milivojeovich* is a complex case and, as we discussed at length in *Bruss*, the abstention doctrine itself has been equally hard for courts to apply consistently in practice. But as we mentioned in *Bruss*, the core of the doctrine simply requires us to determine whether the subject matter of the dispute involves resolving " 'matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law.' " See *Bruss*, 385 Ill. App. 3d at 424 (quoting *Milivojeovich*, 426 U.S. at 713). Crucially for this case, the manner in which religious organizations appoint clergy members to various offices has long been recognized as a doctrinal decision that is outside of the purview of civil courts. See *id.* at 425 (collecting cases on appointment of clergy members). That is exactly what has happened here: Archbishop Popp removed plaintiff from his position as parish priest and transferred him out of the diocese. Whether that action was appropriate or legitimate is not for us to decide because it involves interpreting the doctrinal

rules that govern the ROEA's and OCA's internal disciplinary procedures and the authority of the archbishop within the church.

¶8 Plaintiff attempts to avoid this result by arguing that the sole issue here is not whether he should be the parish priest of St. Mary's or even a clergy member in the ROEA, but rather whether the ROEA followed its own procedures for removing him and transferring him out of the diocese. Plaintiff sees this case as merely a simple application of the logic that we used to resolve *Ervin*. But even if we were to accept plaintiff's premise for the sake of argument, the facts of this case are not analogous to *Ervin* and do not mandate a similar result. The critical point in *Ervin* that precluded application of the ecclesiastical abstention doctrine was that the church's own secular procedures unambiguously placed the power to remove the church pastor with the congregation rather than the board. See *Ervin*, 351 Ill. App. 3d at 46-47. Due to the way that the church's bylaws were structured, we were able to resolve the case without inquiring into any issues of church doctrine. Cf. *Muhammad v. Muhammad-Rahmah*, 289 Ill. App. 3d 740 (1997) (finding that ecclesiastical abstention doctrine did not apply because the organization's bylaws clearly laid out specific procedures for removal of organization's president).

¶9 In this case, the constitution and bylaws are silent regarding the procedures for transferring a priest outside of the diocese, which both parties agree is what happened to plaintiff in this case. Under article I, section 2 of the bylaws, the Bishop (that is, Archbishop Popp in this case) holds the sole power to "[d]iscipline Clergy and Laity in all cases not requiring the action of an Episcopate court." But the bylaws do not specify what "discipline" means. Article I, section 3 of bylaws also gives the bishop authority to "[a]ppoint, *transfer* and remove Parish Priests and Deacons," (emphasis added) but the bylaws are silent as to whether that means that the bishop may unilaterally transfer priest outside of the ROEA or merely within it. Similarly,

article XV, sections 18 and 19 detail the types of punishment that may be administered following a judgment in a church court, but transfer out of the diocese is not one of them.

¶10 Although we are perfectly able to interpret ambiguous provisions in legal documents, the bylaws are not the sole source of governing law for the ROEA and its bishop. In addition to the express powers granted to him by the bylaws, article I, section 1 of the bylaws states that the bishop "shall have the duties and prerogatives granted him by the Holy Canons of the Orthodox Christian Church. *** He shall have the right to veto, interdict and nullify any action, resolution or decision which is contrary to the Holy Canons, teachings and traditions of the Orthodox Christian Church." So although the bylaws do not contain any provisions regarding transfers of priests outside of the ROEA, in order to find that Archbishop Popp had no authority to unilaterally transfer plaintiff without first referring the matter to the church courts we would need to first determine the extent of the bishop's authority for such an action under the canon law of the OCA. This is precisely the type of inquiry that the ecclesiastical abstention doctrine forbids.

¶11 Moreover, the bylaws themselves specifically place jurisdiction over plaintiff's grievances in the hands of the church judicial system. Plaintiff's primary complaint in this court is that Archbishop Popp violated the constitution and bylaws of the ROEA when he transferred plaintiff out of the diocese without a church trial. Yet article XV, section 2 of the ROEA's constitution and bylaws states that "[j]urisdiction of the Episcopate Judicial System shall extend over the following matters: *** (a) Allegations of violation of or nonconformity with the Constitution and/or By-Laws of the Episcopate ***." Plaintiff's complaint against Archbishop Popp falls squarely within this provision governing the church's jurisdiction.¹ And although

¹ The bylaws also contain a provision regarding the exclusivity of the church courts in any matter that deals with members of the church. Article XV, section 28 states:

"No person, Clergy or Lay, subject to these By-Laws and adjudicative jurisdiction of the

plaintiff alleges that was denied a church trial, article XV, section 4 of the bylaws also empowers a "judicial referee" to receive complaints and determine whether the complaint is "based on just cause, being well grounded in fact and warranted under this Constitution and By-Laws *and Christian propriety*." (Emphasis added.) The emphasized phrase, although not defined in the bylaws, indicates that the ROEA's judicial system is grounded not merely in neutral legal principles but also in Christian religious principles. Thus, in order for us to find that the ROEA was wrong to deny plaintiff the right to a trial in the church courts, we would necessarily have to find that his complaint satisfies "Christian propriety". Such a finding would necessarily require inquiring into doctrinal matters, which prevents us from applying neutral, secular principles of law to resolve plaintiff's claim.

¶12 The ecclesiastical abstention doctrine therefore prohibits us from considering plaintiff's request for an injunction requiring a church trial, and it also bars us from considering plaintiff's contract and tort claims. Plaintiff brought two contract claims, one based on breach of contract and the other on promissory estoppel. Plaintiff's contract claims are based on the allegations that (1) Archbishop Popp made an offer for plaintiff to join the ROEA and perform pastoral services in exchange for compensation, (2) that plaintiff accepted the offer, and (3) that Archbishop Popp breached the contract by transferring him out of the ROEA in violation of the ROEA's constitution and bylaws. Plaintiff bases his promissory estoppel count on essentially the same factual allegations. But as with the claim for an injunction, we cannot resolve the contract

Episcopate shall avail himself or herself of the civil courts in any matter concerning the Episcopate *** except as otherwise provided by law and no such person shall avail himself or herself of the civil courts in any such matter until he or she first has exhausted all the procedures described herein. The Episcopate has the express right and authority to file a motion and to intervene in any civil court for the purpose of securing dismissal of any such action and to enforce its exclusive jurisdiction under the Constitution and By-Laws."

None of the parties has explained (or even argued) what the effect of this provision should be in this case, so we do not consider it in resolving this appeal. Still, we wonder why plaintiff has chosen to bring this issue to the civil courts when the ROEA's own bylaws contain extensive procedures for handling his complaints and appealing any adverse rulings within the church, and when plaintiff himself contends to be subject to its jurisdiction.

claims because in order to do so, we must first determine whether Archbishop Popp acted outside of his authority when he transferred plaintiff out of the diocese. We cannot do so without inquiring into the extent of Archbishop Popp's authority to do so as a matter of canon law pursuant to article I, section 1 of the ROEA's bylaws, which is prohibited under the ecclesiastical abstention doctrine.

¶ 13 The result is the same for plaintiff's tort claims. Plaintiff brought claims for tortious interference with a contract, tortious interference with prospective economic advantage, defamation, false light, and intentional infliction of emotional distress(IIED). We need not get into the factual details of the two tortious interference claims and the IIED claim, given that a necessary element of those torts is that the defendants' acts were either unjustified or outrageous. See, e.g., *Feltmeier v. Feltmeier*, 207 Ill. 2d 236, 274 (2008) (noting that in an IIED claim, "to qualify as outrageous, the nature of the defendant's conduct must be so extreme as to go beyond all possible bounds of decency and be regarded as intolerable in a civilized community"); *Grund v. Donegan*, 298 Ill. App. 3d 1034, 1038 (1998) (essential element for tortious interference is "the defendant's intentional and *unjustified* inducement of a breach of the contract" (emphasis added)). If Archbishop Popp had the authority to transfer plaintiff, then by definition his actions cannot be unjustified or outrageous. And we cannot determine whether the transfer was improper without determining the extent of the archbishop's authority to effect that transfer, which would involve inquiring into his authority under both the ROEA's bylaws and canon law.

¶ 14 But even leaving that issue aside, the larger problem with plaintiff's tort claims is that they are all based on internal communications within the church during apparent disciplinary proceedings. Plaintiff's tort claims arise from comments that Archbishop Popp made in letters to the parishioners at St. Mary's regarding the transfer of plaintiff. Although religious

organizations are not exempt from general principles of tort liability (see *Duncan v. Peterson*, 359 Ill. App. 3d 1034 (2005)), the ecclesiastical abstention doctrine provides protection for statements that are made in the context of disciplinary proceedings as part of a church's right to regulate its clergy. See generally *Stepak v. Doe*, 392 Ill. App. 3d 739, 746-56 (2009). Plaintiff attempts to avoid application of *Stepak* to this case by noting that no church court was ever convened, meaning that Archbishop Popp's comments could not have been made during disciplinary proceedings. But according to an undisputed affidavit in the record, disciplinary proceedings within the OCA and ROEA are not confined to judicial proceedings. Instead, OCA canon law permits diocesan bishops to administer informal "pastoral" discipline, which includes personnel transfers outside of the diocese, without resorting to a formal church trial.

¶ 15 Plaintiff has not offered any affidavits or other evidence to the contrary, so based on the record we must assume that Archbishop Popp's comment were made in the course of this "pastoral" disciplinary process. Yet if Archbishop Popp has the canonical authority to discipline plaintiff by transferring him and his allegedly tortious comments were made during that process, then under *Stepak* the ecclesiastical abstention doctrine bars us from considering plaintiff's tort claims. And although plaintiff asserts that "discipline" can mean only the formal church judicial process spelled out in the ROEA's bylaws, resolving that issue would require us to delve into church law, which is impermissible under the doctrine.

¶ 16 Ultimately, the problem with all of plaintiff's arguments in this case is that the constitution and bylaws of the ROEA are not the final word on the authority of the ROEA's bishop, which makes this case distinguishable from each of the cases that plaintiff urges us to follow. We cannot apply neutral principles of law to resolve plaintiff's claims because each of those claims are based on the fundamental allegation that Archbishop Popp lacked the authority

to do what he did. The bishop's authority over disciplinary and personnel matters springs not only from the constitution and bylaws of the ROEA but also from OCA canon law, so any inquiry that we were to make in this case would require us to construe matters of religious doctrine. That is something that we cannot do.

¶17 Affirmed.